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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1938

No. 368

RAY L. CHESEBRO, APPELLANT,

vs.

LOS ANGELES COUNTY FLOOD CONTROL DISTRICT ET AL.

APPEAL FROM THE SUPREME COURT OF THE STATE OF CALIFORNIA

FILED SEPTEMBER 21, 1938.

PREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

No. 368

RAY L. CHESEBRO, APPELLANT,

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& DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., DECEMBER 12, 1938.

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[fols. 1-2] [File endorsement omitted]

[fol. 3]

IN SUPREME COURT OF CALIFORNIA

THE CITY OF LOS ANGELES, a Municipal Corporation and RAY L. CHESEBRO, In Propria Persona, Petitioners,

vs.

LOS ANGELES COUNTY FLOOD CONTROL DISTRICT, BOARD OF SUPERVISORS of the County of Los Angeles, Board of Supervisors of the County of Los Angeles as the Board of Supervisors of the Los Angeles County Flood Control District, John Anson Ford, Leland M. Ford, Herbert C. Legg, Roger W. Jessup and Gordon L. McDonough, as Members of and Constituting the Board of Supervisors of the County of Los Angeles, and Ex Officio the Board of Supervisors of the Los Angeles County Flood Control District, Respondents

PETITION FOR WRIT OF MANDATE—Filed January 31, 1938

To the Chief Justice and Associate Justices of the Supreme Court of the State of California:

Come now the City of Los Angeles, a municipal corporation, and Ray L. Chesebro, in propria persona, and respectfully petition this Honorable Court for a writ of mandate directed against respondents, and, in support thereof, respectfully allege as follows, to-wit:

[fol. 4] I

That petitioner City of Los Angeles is the owner of taxable real property situated within the Los Angeles County Flood Control District and outside the corporate limits of the City of Los Angeles, and outside the exterior boundaries of the drainage districts mentioned in paragraph III of this petition; and that petitioner Ray L. Chesebro is the owner of taxable real property situated within the Los Angeles County Flood Control District and within the corporate limits of the City of Los Angeles, and outside the exterior boundaries of the drainage districts mentioned in paragraph III hereof.

II

That the respondents, John Anson Ford, Leland M. Ford, Herbert C. Legg, Roger W. Jessup and Gordon L. McDonough, are the duly qualified and acting members of the Board of Supervisors of the County of Los Angeles.

III

That Drainage Districts Nos. 1 and 3, in the County of Los Angeles, were duly organized, and now exist, under and by virtue of the provisions of the Statutes of 1903, page 354, and acts amendatory thereof; and that Drainage Districts Nos. 8, 9, 11, 17, 22, 23, 25, 26 and 29 were each duly organized, and now exist, under and by virtue of the provisions of the Drainage District Improvement Act of 1919 (Stats. 1919, page 731), and acts amendatory thereof.

[fol. 5]

IV

That on the 1st day of December, 1937, the Board of Supervisors of the County of Los Angeles, as the Board of Supervisors of the Los Angeles County Flood Control District, by resolution, a copy of which is attached hereto in Exhibit "A" and made a part hereof by reference, the same as if set forth herein in full, purported to accept, on behalf of the Los Angeles County Flood Control District, a transfer and conveyance (made by resolution adopted on the same day by said Board of Supervisors and included in Exhibit "A") to said Flood Control District of storm drain improvements, drainage improvements or drainage systems, as set forth in said Exhibit "A," and including those of the drainage districts mentioned in paragraph III of this petition; that said resolutions were adopted over the protest of petitioner City of Los Angeles, by resolution of the City Council of the City of Los Angeles adopted on the 25th day of August, 1937, attached hereto as Exhibit "B" and made a part hereof the same as if set forth in full, and that said resolution was communicated to respondents, and each of them, prior to the adoption of said resolutions attached hereto as Exhibit "A."

V

That the bond redemption and interest requirements of Drainage Districts Nos. 8, 9, 11, 17, 22, 23, 25, 26 and 29 aggregate $4,234,001.25.

[fol. 6]

VI

That the Board of Supervisors of the County of Los Angeles as the Board of Supervisors of the Los Angeles County Flood Control District, intend to levy annual special assessments against all real property situated within said Flood Control District and outside the exterior boundaries of said drainage districts, including the real property of petitioners, sufficient to meet the outstanding obligations incurred for the works and improvements described in Exhibit "A."

VII

That the levy of such special assessments described in paragraph VI will be illegal and void, in that it will be a special assessment levied against the property situated in one special assessment district to pay the debts and obligations of other special assessment districts, without regard to the accrual of benefits to the lands assessed, and will be a gift of public funds, in violation of the provisions of section 31 of article IV of the constitution of the State of California; that the levy of said special assessments will deprive petitioners of their property without due process of law and will deny to petitioners the equal protection of the laws, in violation of the provisions of article V and article XIV of the amendments to the Constitution of the United States and section 13 of article I of the Constitution of the State of California.

[fol. 7]

VIII

That petitioners have no plain, speedy or adequate remedy at law to prevent the threatened levy of said special assessments, as aforesaid, and that unless said levy is prohibited a multiplicity of suits will result, and that this petition is made to this Honorable Court in the first instance for the reason that both petitioners and respondents urge the necessity of the early settlement of the question as to the validity of the transfer and conveyance of the works and improvements of the said drainage districts to the Los Angeles County Flood Control District, as herein set forth, in order to avoid serious confusion in providing for the payment of the outstanding obligations of said drainage districts, and in determining the amount of the assessments to be levied on behalf of the Los Angeles County Flood Control District.

IX

That all of the owners of taxable real property in the Los Angeles County Flood Control District and the drainage districts mentioned in paragraph III hereof are the parties interested in this proceeding.

Wherefore, petitioners pray that this Honorable Court issue its peremptory writ of mandate commanding respond-[fol. 8] ents to levy assessments on behalf of the Los Angeles County Flood Control District upon the taxable real property within said district solely in accordance with the provisions of the Los Angeles County Flood Control Act prior to the addition thereto, by chapter 642 of the Statutes of 1937, of section 13½, and to refrain from levying on behalf of the Los Angeles County Flood Control District any assessment for the payment of the principal upon the bonds of said drainage districts referred to in paragraph III of this petition, or the indebtedness represented by interest coupons of said bonds or for the cost or expense of operating, maintaining, repairing or improving the storm drain improvements, drainage improvements or drainage systems of said drainage districts.

Ray L. Chesebro, City Attorney; William H. Neal, Assistant City Attorney; Bourke Jones, Deputy City Attorney, Attorneys for Petitioner, City of Los Angeles. Ray L. Chesebro, In Propria Persona.

[fol. 9] EXHIBIT "A" TO PETITION

Office of the Board of Supervisors of the County of Los Angeles, State of California

Wednesday, December 1, 1937.

The Board met in regular session pursuant to recess. Present: Supervisors Roger W. Jessup, Chairman presiding. H. C. Legg, Gordon L. McDonough, John Anson Ford and L. M. Ford; and L. E. Lampton, Clerk, by Mame B. Beatty, Deputy Clerk.

. . . . . .

(Minute Book 236—Page 51)

In re Storm Drain Improvements, Drainage Improvements and Drainage Systems: Resolution Authorizing Transfer and Conveyance to the Los Angeles County Flood Control District

On motion of Supervisor L. M. Ford, duly seconded by Supervisor Legg, and carried by the following vote, to-wit: Ayes, Supervisors Legg, McDonough, L. M. Ford, and Jessup; Noes, Supervisor John Anson Ford, it is ordered that the following resolution be, and the same is hereby adopted, to-wit:

Whereas, the laws of the State of California authorize and empower the Board of Supervisors to transfer and convey any and all storm drain improvements, drainage im- [fol. 10] provements and drainage systems which were constructed under the jurisdiction, control or supervision of the Board of Supervisors and which are under the jurisdiction of said Board, and those which were constructed by or for the County or any drainage district or flood control district in such county, and those constructed under the provisions of an act entitled "An act to promote the drainage of wet, swamp and overflowed lands, and to promote the public health in communities in which they lie," approved March 21, 1903, as amended, and those which have been constructed pursuant to the provisions of the Drainage District Improvement Act of 1919, as amended, prior to January 1, 1937, to any flood control district in such county; and

Whereas, there have been constructed storm drain improvements, drainage improvements and drainage systems in the above enumerated classes in the County of Los Angeles; and

Whereas, there is in the County of Los Angeles a flood control district, to-wit, the Los Angeles County Flood Control District;

Now, Therefore, Be It Resolved by the Board of Supervisors of the County of Los Angeles that the following storm drain improvements, drainage improvements and drainage systems in said county are hereby transferred and conveyed to the Los Angeles County Flood Control District:

[fol. 11] 1. Benedict Canyon, Alhambra Avenue, Hooper Avenue (two units), City Terrace, West Altadena and Olive View storm drain improvements, drainage improvements

and drainage systems constructed under the jurisdiction, control or supervision of the Board of Supervisors of the County of Los Angeles, and which said storm drain improvements, drainage improvements and drainage systems are now under the jurisdiction of said Board of Supervisors or were constructed by or for the county, or a drainage district or flood control district in such county, pursuant to plans and specifications which are now on file in the office of said Board of Supervisors;

2. Drainage districts numbers 1 and 3 in said county constructed under plans and specifications on file in the office of said Board of Supervisors, pursuant to the provisions of an act, entitled "An act to promote the drainage of wet, swamp and overflowed lands, and to promote the public health in communities in which they lie," approved March 21, 1903, as amended, both constructed prior to January 1, 1937;

3. Drainage districts numbers 8, 9, 11, 17, 22, 23, 25, 26 and 29 in the County of Los Angeles and constructed under plans and specifications now on file in the office of the Board of Supervisors of said county pursuant to the provisions of the Drainage District Improvement Act of 1919, [fol. 12] as amended, and all constructed prior to January 1, 1937.

Reference is hereby made to the plans, specifications, contracts and record of proceedings for the above named drainage districts now on file in the office of the Board of Supervisors of said county, and to the plans and specifications on file in the office of the County Surveyor of said county, for detailed description of the storm drain improvements, drainage improvements and drainage systems hereby conveyed and transferred.

The Board of Supervisors of said county also hereby transfers and conveys unto the Los Angeles County Flood Control District any and all easements and rights of way granted unto said County, or any drainage district or flood control district of said county, and now used for any of the above enumerated storm drain improvements, drainage improvements or drainage systems.

Any and all funds now on hand to the credit of any of the above enumerated drainage districts are hereby transferred unto the Los Angeles County Flood Control District to be retained by said District in the funds of said drainage dis-

tricts, and expended by said Flood Control District for the purposes and in the manner provided by law.

[fol. 13] From and after the date of the conveyance and transfer made hereby the said Los Angeles County Flood Control District shall thereupon be and become liable for the payment of the principal upon the bonds of any of the above enumerated improvement districts maturing subsequent to the date hereof, and for the indebtedness of said enumerated drainage improvement districts represented by interest coupons maturing subsequent to the date of this resolution, and the Board of Supervisors of said Los Angeles County Flood Control District shall levy a special tax each year upon the taxable real property in said Flood Control District sufficient to pay the principal and interest becoming due from and after the date of this resolution. Such tax shall be levied and collected on said real property at the same time and in the same manner as the general tax levied for county purposes, and when collected shall be paid into the county treasury of said County of Los Angeles to the credit of said district fund and shall be used for the payment of the principal and interest on the bonds of said enumerated drainage districts, and for no other purpose; provided, however, that if there is any surplus of the proceeds of such collection such surplus shall be deposited in the County Treasury to the credit of the interest and sinking fund of such Flood Control District and used solely and exclusively for the payment of principal and interest of the bonds of such Flood Control District.

[fol. 14] From and after the date of the conveyance and transfer hereby made said Flood Control District shall thereafter do all things necessary for the proper operation, maintenance, repair and improvement of any such storm drain improvements, drainage improvements or drainage systems, and may levy a special tax upon the taxable real property in said Flood Control District sufficient to pay the cost and expense of operating, maintaining, repairing and improving the storm drain, drainage improvements or drainage systems, which said tax shall be separate and distinct from, and shall be in addition to, the taxes authorized to be levied by said Flood Control District under Section 14 of the "Los Angeles County Flood Control District Act."

In re Transfer and Conveyance by County of Los Angeles to Los Angeles County Flood Control District of Storm Drain Improvements, Drainage Improvements and Drainage Systems: Resolution of Acceptance.

On motion of Supervisor Legg, duly seconded by Supervisor L. M. Ford, and carried by the following vote, to-wit: Ayes, Supervisors Legg, McDonough, L. M. Ford and Jessup; Noes, none (Supervisor John Anson Ford being temporarily absent), it is ordered that the following resolution be, and the same is hereby adopted, to-wit:

[fol. 15] Whereas, the laws of the State of California authorize and empower the Board of Supervisors of the Los Angeles County Flood Control District to accept on behalf of said district a transfer and conveyance to said Flood Control District of storm drain improvements, drainage improvements or drainage systems lying within the territorial limits of said District and within any of the following described classes, to-wit:

1. Those which were constructed under the jurisdiction, control or supervision of the Board of Supervisors of the County of Los Angeles, and which are under the jurisdiction of said Board;

2. Those which were constructed by or for the County of Los Angeles or any drainage district within said county or by or for the Los Angeles County Flood Control District;

3. Those constructed pursuant to the provisions of an act entitled "An act to promote the drainage of wet, swamp and overflowed lands, and to promote the public health in communities in which they lie," approved March 21, 1903, as amended, and those which have been constructed pursuant to the provisions of the Drainage District Improvement Act of 1919, as amended, prior to January 1, 1937;

4. Those within any incorporated city, town or municipality of the County of Los Angeles whose legislative body [fol. 16] has transferred and conveyed such storm drain improvements, drainage improvements or drainage systems to said Flood Control District pursuant to the provisions of any act of the State of California authorizing such transfer and conveyance; and

Whereas, the Board of Supervisors of the County of Los Angeles has by resolution transferred and conveyed unto

the Los Angeles County Flood Control District certain storm drain improvements, drainage improvements and drainage systems lying within the territorial limits of the Los Angeles County Flood Control District;

Now, Therefore, Be It Resolved by the Board of Supervisors of said Los Angeles County Flood Control District that said District does hereby accept the following storm drain improvements, drainage improvements and drainage systems, to-wit:

1. Benedict Canyon, Alhambra Avenue, Hooper Avenue (two units), City Terrace, West Altadena and Olive View storm drain improvements, drainage improvements and drainage systems constructed and which are under the jurisdiction, control or supervision of the County of Los Angeles, or which were constructed by or for the County of Los Angeles or any drainage district thereof, or the Los Angeles County Flood Control District, pursuant to plans and specifications now on file in the office of the Board of Supervisors of said Los Angeles County.

[fol. 17] 2. Drainage districts numbers 1 and 3 in said county constructed under plans and specifications on file in the office of said Board of Supervisors pursuant to the provisions of an act entitled "An act to promote the drainage of wet, swamp and overflowed lands, and to promote the public health in communities in which they lie," approved March 21, 1903, as amended, and which were constructed prior to January 1, 1937;

3. Drainage districts numbers 8, 9, 11, 17, 22, 23, 25, 26 and 29, in the County of Los Angeles, and constructed under plans and specifications now on file in the office of the Board of Supervisors of said county pursuant to the provisions of the Drainage District Improvement Act of 1919, as amended, which were constructed prior to January 1, 1937.

Reference is hereby made to the plans, specifications, contracts and record of proceedings for the above named drainage districts now on file in the office of the Board of Supervisors of said county, and to the plans and specifications on file in the office of the County Surveyor of said county, for detailed description of the storm drain improvements, drainage improvements and drainage systems hereby accepted.

[fol. 18] STATE OF CALIFORNIA,

County of Los Angeles, ss:

I, L. E. Lampton, County Clerk, and ex-officio Clerk of the Board of Supervisors of said County, do hereby certify that the foregoing is a full, true and correct copy of the original Minutes of the Board of Supervisors, as entered in Minute Book No. 236, pages 51 to 53, inclusive, In re Storm Drain Improvements, Drainage Improvements and Drainage Systems: Resolution Authorizing Transfer and Conveyance to the Los Angeles County Flood Control District; also In re Transfer and Conveyance by County of Los Angeles to Los Angeles County Flood Control District of Storm Drain Improvements, Drainage Improvements and Drainage Systems: Resolution of Acceptance; and that I have carefully compared the same with the original.

It Witness Whereof, I have hereunto set my hand and affixed the seal of the Board of Supervisors, this 28th day of December, 1937.

L. E. Lampton, County Clerk and ex-Officio Clerk of the Board of Supervisors of the County of Los Angeles, State of California, by Mame B. Beatty, Deputy. (Seal.)

[fol. 19] EXHIBIT "B" TO PETITION

Resolution

Whereas, Chapters 641 and 642 of the Statutes of 1927 become effective August 27th, 1937, and

Whereas, we are informed that the Board of Supervisors of the County of Los Angeles, pursuant to the authority granted by said statutes, contemplates the taking over of certain drainage districts in said County by the Los Angeles Flood Control District, and

Whereas, said drainage districts have a bonded debt of approximately five (5) million dollars and the bond interest and principal requirements of said indebtedness, if spread over the entire county, would increase the tax rate upon the property owners within the City of Los Angeles approximately four (4) cents per $100.00 assessed valuation, and

Whereas, the property owners of the City of Los Angeles have been directly assessed under the Improvement Act of

1911 in a sum exceeding fifteen (15) million dollars, the following being a list of such major projects:

Arroyo de La Brea	$682,000.00
Boyle Heights #2	183,000.00
Main Street System	2,813,000.00
Adams and Smilez	289,000.00
Boyle Heights #3	625,000.00
Slauson #2	640,000.00
[fol. 20] La Brea Avenue System	380,000.00
Verdugo and Glassell	505,000.00
Indiana and Mines	230,000.00
Laurel Canyon System	536,000.00
Sawtelle System	634,000.00
Alhambra & Valley Blvd	198,000.00
Bedford and Cashio	125,000.00
San Fernando Road	$155.00
Sacatela System—Complete	3,552,000.00
Jefferson #1, #2, and #3, #4	3,569,000.00

and

Whereas, it would be grossly unfair to the property owners of the City of Los Angeles, after having obligated themselves for storm drain improvements by direct assessment to now be called upon to pay for said drainage district improvements from which they have received no special benefit, and

Whereas, the property owners within the City of Los Angeles have paid more than 50% of the Los Angeles County Flood Control District taxes since the formation of the District, for which they have received comparatively little benefit,

Now, Therefore, Be It Resolved by the Council of the City of Los Angeles that it most strenuously oppose any action by the Board of Supervisors of the County of Los Angeles attempting to merge said drainage districts with the Flood Control District and thus force the property owners within the City of Los Angeles to assume more than 50% of the bonded debt and the maintenance charges of said drainage [fols. 21-22] districts, and

Be It Further Resolved that the City Clerk be instructed to certify to the adoption of this Resolution and transmit

a copy thereof so certified to the Board of Supervisors of said County.

Presented by: Davis.

August 25, 1937.

STATE OF CALIFORNIA,
County of Los Angeles, ss:

I, Robt. Dominguez, City Clerk of the City of Los Angeles and ex-officio Clerk of the City Council of the City of Los Angeles, do hereby certify and attest the foregoing to be a full, true and correct copy of the original Resolution adopted by the City Council August 25, 1937, in the matter appertaining thereto, on file in my office, and that I have carefully compared the same with the original.

In Witness Whereof, I have hereunto set my hand and affixed the Seal of the City of Los Angeles, this 27th day of January, 1938.

Robt. Dominguez, City Clerk of the City of Los Angeles, by A. Manvezin, Deputy. (Seal.)

[fols. 23-24] *Duly sworn to by Ray L. Chesebro and Robt. Dominguez. Jurats omitted in printing.*

[fol. 25] POINTS AND AUTHORITIES IN SUPPORT OF PETITION

Gist of Petition

The purpose of this petition is to secure a determination of the question of the invalidity of section 13½ of the Los Angeles County Flood Control District Act (Chap. 642 of Stats. 1937), which purports to authorize the Board of Supervisors to accept a transfer "of all, but not less than all," of certain classes of storm drain improvements, drainage improvements or drainage systems lying within the territorial limits of the Los Angeles County Flood Control District. In substance, the petition alleges that the Board of Supervisors has by resolution accepted the conveyance of certain drainage district improvements under the purported authority of the 1937 amendment adding section 13½ to the Flood Control Act, and that they intend to meet the outstanding obligations of such drainage districts and maintain the said works and improvements by levying special assessments upon the taxable real property situated

throughout the entire Flood Control District, which includes lands outside the boundaries of the respective drainage districts.

[fol. 26]

I

The Los Angeles County Flood Control District is a special assessment district and assessments levied on behalf of said district are special assessments.

Los Angeles County Flood Control Dist. v. Hamilton, 177 Cal. 119.

II

The cost of the improvements of a special assessment district may not be imposed upon the lands of another larger special assessment district embracing the territory of the smaller district where no special benefits accrue to the lands of the larger district.

Reclamation Dist v. Birks, 159 Cal. 233;
Barber v. Galloway, 195 Cal. 1.

See, also:

City of Redwood City v. Myers, 7 Cal. (2d) 283.

III

No property can be subjected to the burden of a special assessment except property which is specially benefited by the local improvement for which the assessment is levied.

Atchison, Topeka and Santa Fe Ry. Co. v. Reclamation District No. 404, 173 Cal. 91, 93.

[fol. 27]

IV

No legislative finding has been made that the lands within the flood control district are specially benefited by the works of the drainage districts sought to be transferred to the flood control district, as was made in Palo Verde Irr. Dist. v. Seeley, 198 Cal. 477.

V

The levy of a special assessment without a finding of benefit to the lands assessed or an opportunity to property owners to be heard is lacking in due process.

Fallbrook Irr. Dist. v. Bradley, 164 U. S. 112, 41 L. Ed. 369.

VI

Lands not included within a special assessment district are not presumed to be benefited by an improvement by the district unless a legislative declaration to the contrary is expressed.

Palo Verde Irr. Dist. v. Seeley, 198 Cal. 477;
Board of Directors v. Dunbar, 107 Ark. 285, 155 S. W. 96.

(A) Under the Drainage District Improvement Act of 1919 the county surveyor is directed to include all lands which will be benefited by the improvement. Since official [fols. 28-32] duty is presumed to have been regularly performed (C. C. P. 1963, Subd. 15), presumably lands not included within the district are not benefited by the improvement contemplated.

VII

The Statutes of 1937, page 1763, do not provide for a transfer of the obligations of drainage districts to the county but to another special assessment district, nor is there any legislative finding as to the necessity for such transfer nor as to the purpose for which it is purported to be authorized. Thus, the case at bar is distinguished from the issues presented in County of San Diego v. Hammond, 6 Cal. (2) 709, and County of Los Angeles v. Jones, 6 Cal. (2d) 695.

VIII

A writ of mandate will lie for the relief as prayed for in the foregoing petition.

Felt v. Waughop, 193 Cal. 498.

[fols. 33-36] [File endorsement omitted]

[fol. 37] In Supreme Court of California

[Title omitted]

Demurrer of Respondents—Filed February 28, 1938

Come now the respondents in the above entitled action and make return to the petition herein by demurrer on the following grounds, to-wit:

[fols. 38-44] I

That the petition does not state facts sufficient to constitute a cause of action upon which this Court can legally issue the writ sought by the petition.

Wherefore, the respondents pray that the petition be denied and the return not issued.

Everett W. Mattoon, County Counsel, and J. H. O'Connor, Ass't County Counsel, and H. W. Kennedy, Deputy County Counsel, and W. B. McKesson, Deputy County Counsel, Attorneys for Respondents.

[fol. 45] [File endorsement omitted]

IN SUPREME COURT OF CALIFORNIA

In Bank

[Title omitted]

ORDER OF SUBMISSION—Filed March 14, 1938

By the COURT:

The time for filing briefs pursuant to an order entered herein March 3, 1938, having expired, matter (mandate) submitted as of this date.

Dated March 14, 1938.

(Signed) Waste, Chief Justice.

[fol. 46] [File endorsement omitted]

IN SUPREME COURT OF CALIFORNIA

In Bank

[Title omitted]

ORDER DENYING PETITION FOR REHEARING

By the COURT:

The Petition for a rehearing herein is denied.

Dated July 8, 1938.

(Signed) Waste, Chief Justice.

[fol. 47] [File endorsement omitted]

[fol. 48] SUPREME COURT OF THE UNITED STATES

[Title omitted]

PETITION FOR APPEAL, ASSIGNMENT OF ERRORS AND PRAYER FOR REVERSAL—Filed August 5, 1938

Considering themselves aggrieved by the final decision of the Supreme Court of the State of California, in the above-entitled cause, the petitioners therein, the City of Los Angeles, a municipal corporation, and Ray L. Chesebro, [fol. 49] hereby pray that an appeal be allowed to the Supreme Court of the United States, herein, and for an order fixing the amount of the bond thereon.

Summary Statement of the Case

The validity of a statute of the State of California, to wit, Statutes of 1937, page 1763, adding section 13½ to the Los Angeles County Flood Control District Act, Statutes of 1915, page 1502, is drawn into question upon the ground that said statute deprives appellants, and each of them, of their property without due process of law and denies to each of them the equal protection of the laws, in violation of the provisions of article V and article XIV of the Amendments to the Constitution of the United States, in that:

Said statute, adding section 13½ to the Los Angeles County Flood Control District Act, authorizes the Board of Supervisors of the Flood Control District, which is a special assessment district, to transfer to the Flood Control District, at their discretion, all, but not less than all, storm drain and drainage works and improvements, including the drainage works of drainage districts situated within the territorial limits of the Flood Control District, and to assume the outstanding obligations incurred in constructing such works and improvements without regard to the question of benefits to [fol. 50] the lands which will be assessed for the payment of such obligations, for the reason that no provision is made for giving the owners of taxable real property within the Flood Control District an opportunity to be heard on such questions or on the amount of the assessments.

The Supreme Court of the State of California is the court of last resort in this case, and on June 9, 1938, it ren-

dered a judgment in said case. Appellants filed a petition for rehearing before said court within the time allowed by the rules of said court, to wit, on June 27, 1938, and the same was denied on July 8, 1938, and the judgment became final on July 10, 1938. The judgment rendered, as aforesaid, finally disposed of all the issues in the case by discharging the alternative writ of mandate directing that the respondents cause to be levied assessments only in accordance with the provisions of the Los Angeles County Flood Control District Act as it existed prior to its amendment in 1937 by the statute whose validity is here questioned.

The opinion of the Supreme Court of California has not as yet been officially reported but is unofficially reported in City of Los Angeles, et al. v. Los Angeles County Flood Control District, et al., 80 Pac. (2d) 479, 95 California Decisions 525.

[fol. 51] Assignment of Errors

The appellants assign the following errors in the record and proceedings in said case:

I

The Supreme Court of the State of California erred in holding that the rights of appellants secured and protected by the provisions of section 1 of article XIV of the Amendments to the Constitution of the United States were not violated by a statute which authorizes the managing board of a special assessment district (Los Angeles County Flood Control District) created by the legislature to exercise discretionary power and accept a transfer of the works and assume the obligations of other special assessment districts (drainage districts) subsequently created by the County Board of Supervisors upon petition of landowners within such other special assessment districts (drainage districts) without requiring that the owners of taxable real property within the special assessment district (Los Angeles County Flood Control District) proposing to accept the transfer be given an opportunity to be heard on the question of whether such transfer and assumption of obligation will be of benefit to the taxable real property of the district.

II

The Supreme Court of the State of California erred in holding that by designating the classes of structures which

might be transferred to the Los Angeles County Flood Con-
[fol. 52] trol District at the discretion of the Board of Supervisors of Los Angeles County (the managing board of the Los Angeles County Flood Control District) it is to be presumed that the legislature concluded that the Los Angeles County Flood Control District would be benefited by the structures of such classes if and when they should be acquired on behalf of the Flood Control District.

III

The Supreme Court of the State of California erred in holding that section 13½ of the Los Angeles County Flood Control District Act (Stats. of 1937, p. 1763) refers to specific classes of structures, the nature of which indicates their relative usefulness for the purposes of the Flood Control District without the necessity of any express declaration to such effect.

Prayer for Reversal

For which errors appellants pray that the said judgment of the Supreme Court of the State of California, dated June 9, 1938, in the above-entitled cause, be reversed, and a judgment rendered in favor of appellants, and for costs.

[fols. 53-81] Ray L. Chesebro, City Attorney; Frederick von Schrader, Assistant City Attorney; William H. Neal, Assistant City Attorney; Bourke Jones, Deputy City Attorney, by Frederick von Schrader, Assistant City Attorney, Counsel for Appellant City of Los Angeles. Frederick von Schrader, William H. Neal, Bourke Jones, by Frederick von Schrader, Counsel for Appellant Ray L. Chesebro.

[fol. 82] [File endorsement omitted]

IN SUPREME COURT OF CALIFORNIA

In Bank

S. F. No. 15990

THE CITY OF LOS ANGELES, a Municipal Corporation, et al., Petitioners,

vs.

LOS ANGELES COUNTY FLOOD CONTROL DISTRICT et al., Respondents

OPINION—Filed June 9, 1938

This proceeding in mandamus presents the question of the constitutionality of section 13½ of the Los Angeles County Flood Control District Act added to the statute in 1937 (Stats. 1937, p. 1763). The original statute is found in the statutes of 1915 at page 1502.

The petitioners alleged their ownership of lands situated and assessable within the Los Angeles County Flood Control District but outside the confines of certain named drainage districts within the flood control district. The petition shows that in December, 1937, the board of supervisors of Los Angeles county, acting as the board of supervisors of the flood control district, by resolution, accepted a transfer to the flood control district of the storm drain improvements, drainage improvements and drainage systems of drainage districts numbers 1 and 3, organized under the statute of 1903 (Stats. 1903, p. 354), and of drainage districts numbers 8, 9, 11, 17, 22, 23, 25, 26 and 29, organized under the [fol. 83] Drainage District Improvement Act of 1919 (Stats. 1919, p. 731), and amendatory acts. All of said drainage districts and drainage district improvements are located within the territory comprising the Los Angeles County Flood Control District. In the course of the proceedings accepting the transfer the board did not expressly make a finding of the necessity or usefulness of such property for any of the purposes of the flood control district, nor was any hearing ordered or had on the question of such usefulness or necessity. The terms of the Conveyance and acceptance provided for the transfer to the flood control district of funds on hand in the several drainage districts and for the assump-

tion by the flood control district of the obligation to pay the principal and interest remaining unpaid on all outstanding bonds, issued by such districts to cover the cost of the improvements conveyed, maturing subsequent to the date of the conveyance or transfer. The petition discloses an intent on the part of the board of supervisors to proceed pursuant to the power vested in it by said section 13½.

It is alleged that the bond redemption and interest requirements of drainage districts numbers 8, 9, 11, 17, 22, 23, 25, 26, and 29 aggregate $4,234,001.25; but what proportion, if not all, of this amount represents obligations maturing subsequent to the date of transfer is not indicated. It is stated [fol. 84] that the board of supervisors intends to levy annual special assessments upon all the real property within the flood control district sufficient to meet the outstanding obligations incurred for the drainage improvements accepted by the board. It is alleged and claimed by the petitioners that such special levy on lands within the flood control district but outside of the drainage districts whose obligations would be affected thereby is illegal and void because, so it is urged, it would be a special assessment levied against property without regard to the accrual of benefits to the lands assessed, and therefore would be a denial of due process and the equal protection of the laws enjoined by the state and federal Constitutions. The petitioners seek to employ the remedy here invoked to restrain the assessment contemplated by the board on lands outside the drainage districts. The alternative writ issued.

Questions of law only are involved. They are presented by a demurrer interposed on behalf of the respondents.

By section 13 of article XI of the state Constitution the legislature is given power "to provide for the supervision, regulation and conduct, in such manner as it may determine, of the affairs of irrigation districts, reclamation districts or drainage districts organized or existing under any law of this state". (Amendment adopted Nov. 3, 1914.)

[fol. 85] The objects and purposes of the Los Angeles Flood Control District Act were stated in section 2 to be: "to provide for the control of the flood and storm waters of said district, and to conserve such waters for beneficial and useful purposes by spreading, storing, retaining or causing to percolate into the soil within said district, or to save or conserve in any manner, all or any of such waters, and to protect from damage from such flood or

storm waters the harbors, waterways, public highways and property in said district". By section 16 the board of supervisors was given the power to do all work and to construct and acquire all improvements necessary or useful for carrying out any of the purposes of the act; also to acquire either within or without the boundaries of the district, by purchase, condemnation, donation or by other lawful means, from private persons, corporations, reclamation districts, swamp land districts, levee districts, protection districts, drainage districts, irrigation districts, or other public corporations, or agencies, or districts, all lands, rights of way, easements, property or materials necessary or useful for carrying out any of the purposes of the act, and to compensate any private owner or reclamation or other district or agency for property taken over or acquired by the flood control district as a part of its work of control or conservation or protection.

Section 13½ added by Statutes of 1937 provides that the [fol. 86] board of supervisors of the Los Angeles County Flood Control District, by a four-fifths vote may accept a transfer and conveyance of all, but not less than all, storm drain improvements, drainage improvements or drainage systems lying within the territorial limits of the flood control district and within certain described classes, including those constructed prior to January 1, 1937, pursuant to provisions of the 1903 and 1919 acts hereinabove mentioned. Said section 13½ also contained the following provisions: "Upon the transfer or conveyance to said flood control district of any such storm drain improvements, drainage improvements or drainage systems, to pay the cost and expense of the construction of which bonds of any drainage improvement district have been issued, said flood control district shall thereupon be and become liable for the payment of the principal upon the bonds of such drainage improvement district maturing subsequent to the date of such conveyance and upon the indebtedness of such drainage improvement district represented by interest coupons maturing subsequent to such date of transfer. The board of supervisors of the flood control district shall levy a special tax each year upon the taxable real property in said flood control district sufficient to pay the principal and interest on the bonds of said drainage districts as such principal and interest become due subsequent to the date of such conveyance and transfer. Such tax shall be levied

[fol. 87] and collected on said real property at the time and in the same manner as the general tax levy for county purposes, and when collected shall be paid into the county treasury of said county of Los Angeles to the credit of said district fund and shall be used for the payment of the principal and interest on said drainage district bonds and for no other purpose."

It will be noted that neither section 16 nor section 13½ provides for a rehearing prior to acquisition of any of the property described therein, and that section 16 alone expressly restricts the acquisition of property to that which is necessary or useful for the purposes of the district. It will also be noted, however, that section 16 does not refer to specific property, such as is described in section 13½. In other words, section 16 provides generally for the acquisition of such property as, in the opinion of the board of supervisors, may be necessary or useful to carry out the purposes of the flood control act. Section 13½, on the other hand, refers to the acceptance of a limited class of described property, namely, the specified storm drain improvements, drainage improvements, and drainage systems, which from the nature of such property indicates without any express declaration its relative usefulness for the purposes of the flood control district.

The petitioners contend that inasmuch as the legislature in enacting section 13½ did not expressly find that drainage [fol. 88] improvements constructed within the Los Angeles County Flood Control District are beneficial or useful to the lands in the district, and did not provide the means for a hearing and a finding in that respect by a designated body, an assessment levied on lands within the flood control district and outside the drainage districts to meet any part of the cost of such improvements constitutes a deprivation of due process of law. The contention, however, is necessarily grounded on the hypothesis that the drainage improvements are not per se useful for the purposes of the flood control district and therefore not beneficial to all the lands within that district, and that the absence of any legislative declaration of such benefit, or any provision for a hearing on the question of benefit to the lands affected, is fatal to the validity of the section.

To support their theory the petitioners argue that when the drainage districts were formed, especially the districts organized subsequent to the creation of the flood control

district, they presumably included all of the territory which would be benefited by the respective drainage improvements, and that the omission from the districts of any surrounding area conclusively indicates that such area would not be benefited thereby. The petitioners rely generally on cases which hold that only the lands benefited may be assessed to pay the cost of such special improvements (Spring [fol. 89] St. Co. v. City of Los Angeles, 170 Cal. 24; A. T. and S. F. Railway Co. v. Reclamation Dist. No. 404, 173 Cal. 91), and on cases holding that to permit assessments for special improvements without a legislative declaration of benefit to the lands assessed or a provision for a hearing and finding by a properly constituted body, is to deprive the owner of due process in violation of the state and federal Constitutions. (Fallbrook Irrigation Dist. v. Bradley, 164 U. S. 112; Miller & Lux v. Board of Supervisors, 189 Cal. 254.)

Nevertheless the petitioners correctly concede that if the legislature itself has found, either by designating the territory to comprise the district or by expressly so declaring, that the lands included or affected are benefited, such a finding presupposes appropriate and adequate inquiry and is conclusive upon the property owners in the district and upon the courts (Fallbrook Irrigation Dist. v. Bradley, supra; People v. Sacramento Drainage Dist., 155 Cal. 373, 386; Brookes v. City of Oakland, 160 Cal. 423; Miller & Lux v. Board of Supervisors, supra); and in such case it is not essential that the benefits be realized in fact, if otherwise there is any reasonable foundation for the finding of potential benefit. (Board of Directors of Crawford County Levee Dist. v. Dunbar, 107 Ark. 285, 155 S. W. 96.)

The petitioners point to the inclusion in section 16 of [fol. 90] language specifying that lands or improvements within or without the district to be acquired pursuant to the authority of that section, must be such as will be necessary or useful for carrying out the purposes of the act, and to the absence of any such qualifying language in section 13½, as indicative of the invalidity of the latter section. The petitioners, however, have not fully appreciated the necessity for the inclusion of such qualifying language in section 16 and the reason for its omission from section 13½. As noted, section 16 confers the general power upon the board of supervisors to acquire such lands or works, wherever they may be situate, as may be necessary or useful for the pur-

poses of the act. In contrast to that, by section 13½ the legislature itself has specified particular property which may be acquired by the flood control district. Flood control necessarily covers a much larger field and a broader program than one restricted merely to drainage of a specified area. It conceivably includes works or improvements which may be far removed from the lands which will be protected and benefited thereby. It is therefore within the legislative discretion to conclude that a system of drainage improvements, although initially employed to the direct beneficial use of a restricted area for drainage purposes, may be employed in conjunction with flood control facilities for the benefit of a much larger area. By designating in section 13½ the particular property which may be acquired [fol. 91] by the flood control district it must be presumed that the legislature concluded that the entire flood control district would be so benefited by the use of the designated drainage improvements in the larger and broader program of the flood control act.

The petitioners do not question the propriety of a legislative finding that the designated improvements would be so beneficial. They complain of the absence of an express declaration in that regard. But from the import of section 13½ the legislature must be deemed to have exercised its plenary power to make such a finding. That section is not construed as granting a general power to the board of supervisors to acquire properties for the use of the district. It is rather a special declaration that it may acquire on behalf of the flood control district certain designated properties, namely, drainage works and improvements and systems constructed prior to January 1, 1937, by certain classes of drainage districts within the flood control district. This particularity of description of the improvements and property authorized to be accepted by the district presupposes a prior inquiry and investigation on the part of the legislature and a finding by it that such designated improvements will be useful for the purposes of the district and beneficial to the territory comprising the flood control district. It is obvious therefore that section 16 and 13½ have no necessary re- [fol. 92] lation to each other. Nor is section 13½ inconsistent with section 4 of the act, which requires the board of supervisors to employ engineers to formulate the best plan for carrying out the purposes of the act. In the matter of the acquisition of the property described in section 13½

the legislature has itself decided the usefulness of the property to the purposes of the flood control district. Section 13½, together with the enactment of a general statute on the same subject (Stats. 1937, p. 1761), evidences the adoption by the legislature of a comprehensive program of drainage and flood control in the various counties to be carried out by flood control districts, rather than divided among counties, drainage districts and flood control districts.

The Constitution and the decisions do not preclude the carrying out of that program by the enactment of the legislation referred to. As pointed out in Hadley v. Dague, 130 Cal. 207, 220, the mode in which the expense is to be borne as well as the district which is to bear the expense and the manner of distributing the expense are legislative questions. It was there held that although the theory upon which the expense is charged to the land in the district is that the property has received a particular benefit, nevertheless the validity of the assessment does not depend upon the ability to show that the property received a benefit commensurate with the amount of the assessment, that is, that the benefit [fol. 93] is identical with the burden. And quoting from Fallbrook Irrigation District v. Bradley, supra, the court recognized that although the method of arriving at the amount of the burden may in some instances result in inequalities, that circumstance was "far from arising to the level of a constitutional problem, and far from the case of taking property without due process of law". The Hadley case referred to the case of Lent v. Tillson, 72 Cal. 428, and the statement therein that the benefits need not be immediate, but that the only just limitation, if any existed, with respect to assessing for such benefits, was that "a tax will not be upheld when the courts can plainly see that the legislature has not really exercised its judgment at all, or that manifestly and certainly no such benefit can or could reasonably have been expected to result. The judge should not place his mere opinion against that of the legislature."

The following language from the case of Los Angeles County Flood Control District v. Hamilton, 177 Cal. 119, 124-125, might well be held applicable in disposing of the petitioners' contention herein: "The mere passage of the act, then, must be taken to import a finding by the legislature that the proposed work will answer a public purpose and that its execution will benefit the land within the district

to such an extent as to warrant the imposition upon such land of the cost in the manner provided. The findings thus implied are as fully effective as if declared in express terms [fol. 94] in the act itself. (San Christina Inv. Co. v. San Francisco, 167 Cal. 762, 769.) The fixing of the district which is to bear the expense of a local improvement and the mode in which such expense is to be borne and distributed are primarily legislative questions." It has long been settled that adjustments in such matters which are within the legislative discretion may be made subsequent to the organization of such corporate bodies and districts. (Johnson v. City of San Diego, 109 Cal. 468; Palo Verde Irr. Dist. v. Seeley, 198 Cal. 477.)

The legislature has been invested with an enlarged discretion by section 13 of article XI of the Constitution. Cogent reasons must therefore appear in support of objections urged against particular statutory provisions relating to the conduct of such districts enacted subsequent to the adoption of the constitutional amendment before the court would be justified in declaring them invalid. (Wores v. Imperial Irrigation Dist., 193 Cal. 609, 622.)

Our conclusions herein are not opposed to the holding in the case of Reclamation District v. Birks, 159 Cal. 233, relied upon by the petitioners. The present case does not involve a "sale" of improvements from one district to another as was contemplated by the action of the trustees of the reclamation district in the cited case. It was held in the Birks case that one district may not acquire property [fol. 95] of another and impose upon the property owners payment of the debts of the one from which the property has been acquired unless the land so burdened will derive a commensurate benefit therefrom. The result in that case has been obviated here by the action of the legislature declaring in effect that the lands so to be burdened have been or will be benefited by the transfer of the specified property. The same distinction supported the validity of an act which authorized the transfer of properties from a smaller to a larger district in the case of Barber v. Galloway, 195 Cal. 1. The case of City of Redwood City v. Myers, 7 Cal. (2d) 283, does not support the petitioners' position. That case involved the validity of the Municipal Investment Bond Act (Stats. 1915, p. 109), which purported to permit the municipality to levy an assessment for the purpose of issuing bonds the proceeds of which were to be used for purchasing

and retiring improvement bonds of the city or its improvement districts. In line with the case of Reclamation District v. Birks, supra, it was held that the legislature was without the power to authorize the imposition of a tax upon all the lands in the municipality for the purpose of retiring a bond issue, the proceeds of which were to be used for purchase of such bonds; that the permanent purchase of bonds merely to effect their retirement and as a relief measure was not a beneficial use of the proceeds of the bond issue within the [fol. 96] holding of the Birks case.

Our conclusion herein that the statute involved is valid also finds support in Palo Verde Irrigation District v. Seeley, supra. In that case the writ of mandate directed the respondent to sign refunding bonds pursuant to the Palo Verde Irrigation District Act (Stats. 1923, p. 1067.) That act provided for the organization of the Palo Verde Irrigation District which comprised and joined the territory and functions of three former independent agencies, a levee district, a drainage district, and a mutual water company. The legislature expressly declared that all of the improvements of each former district were uniformly advantageous and beneficial to all the lands of the new district. The refunding bonds were issued pursuant to an amendment of 1925 (Stats. 1925, p. 637), for the purpose of redeeming the bonds of all three districts. The power of the legislature to authorize the imposition of the obligation upon the larger district to pay for improvements constructed within the smaller districts was upheld. The respondents there contended that in fixing the boundaries of the smaller district it must have been determined that the lands included therein only and no others were benefited by the works there constructed. But the contention was considered unavailing. The court said: "It may well happen that by the extension of the original plans lands which would not be benefited by the original construction work would derive a benefit not [fol. 97] only from the additional improvement but from the original improvement as well." It is true that in that case the legislative declaration of benefit was express, but it is seen that the same effect should obtain where, as here, from the nature of the enactment, the implication that the legislature so found is unmistakable and unavoidable.

The statement in the case of Van de Water v. Pridham, 33 Cal. App. 252, 261, that there is a radical difference between the purposes of the Drainage Act and the Flood

Control Act, the purpose of the former being to dispose of the water as an injurious element and of the latter to conserve it as a beneficial agent, is not necessarily inconsistent with the conclusions herein expressed. It is not difficult to perceive that the object to be attained by the legislation here questioned, namely, the combination of the functions of drainage and flood control to the end that drainage waters may as well be conserved through the joint facilities of the drainage and flood control districts, is well within the legislative power.

The peremptory writ is denied and the alternative writ is discharged.

Shenk, J.

We concur: Langdon, J. Curtis, J. Waste, C. J. Seawell, J.

[fols. 98-99] Bond on appeal for $300.00, approved and filed August 5, 1938, omitted in printing.

[fol. 100] [File endorsement omitted]

[fol. 101] SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER ALLOWING APPEAL—Filed August 5, 1938

The appellants in the above-entitled suit, and each of them, having prayed for the allowance of an appeal in this cause to the Supreme Court of the United States from the judgment made and entered in the above-entitled suit by [fols. 102-103] the Supreme Court of the State of California on the 9th day of June, 1938, and from each and every part thereof, and having presented and filed their petition for appeal, assignment of errors, prayer for reversal and statement as to jurisdiction, pursuant to the statutes and rules of the Supreme Court of the United States in such case made and provided:

It is Now Here Ordered that an appeal be, and the same is hereby allowed to the Supreme Court of the United States from the Supreme Court of the State of California in the above-entitled cause, as provided by law, and it is Further

Ordered that the Clerk of the Supreme Court of the State of California shall prepare and certify a transcript of the record, proceedings and judgment in this cause and transmit the same to the Supreme Court of the United States so that he shall have the same in said court within sixty days of this date, and it is Further Ordered that security for costs on appeal be fixed in the sum of $300.00.

Dated this 3rd day of August, 1938.

William H. Waste, Chief Justice of the Supreme Court of the State of California.

[fols. 104-112] Citation, in usual form, showing service on J. H. O'Connor, filed August 5, 1938, omitted in printing.

[fol. 113] [File endorsement omitted]

[fol. 113½] SUPREME COURT OF THE UNITED STATES

[Title omitted]

STIPULATION INDICATING PORTIONS OF RECORD TO BE INCORPORATED INTO THE TRANSCRIPT—Filed August 5, 1938

It is Hereby Stipulated, by and between the parties in the above-entitled cause through their counsel, that the following portions of the record be included in the transcript of the record in the above-entitled cause to be transmitted to the Supreme Court of the United States:

[fol. 114] 1. The Petition for Writ of Mandate;
2. The Demurrer to said Petition;
3. The Order of Submission of the Cause;
4. The Decision of the Supreme Court of California;
5. The Order Denying the Petition for Rehearing;
6. The Petition for the Allowance of an Appeal; together with Assignment of Errors and Prayer for Reversal;
7. The Statement As to Jurisdiction;
8. Cost Bond on Appeal;
9. The Order of the Chief Justice of the Supreme Court of California Allowing the Appeal to the United States Supreme Court;
10. The Citation to Appellees;

11. Service of Appeal Papers upon Appellees;
12. This Stipulation Indicating the Portions of the Record to be Included in the Transcript.

Dated this 5th day of August, 1938.

Ray L. Chesebro, City Attorney; Frederick von Schrader, Assistant City Attorney; William H. Neal, Assistant City Attorney; Bourke Jones, Deputy City Attorney, by Frederick von Schrader, Assistant City Attorney, Counsel for Appellant [fols. 115-130] City of Los Angeles. Frederick von Schrader, William H. Neal, Bourke Jones, by Frederick von Schrader, Counsel for Appellant Ray L. Chesebro. J. H. O'Connor, County Counsel, by Wm. B. McKesson and H. W. Kennedy, Deputies County Counsel, Counsel for Appellees.

[fols. 131-132] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 133] SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION TO PRINT ENTIRE RECORD—Filed September 21, 1938

Come Now the appellants in the above-entitled cause, and state that the points upon which they intend to rely in this court in this case are as follows:

[fol. 134] Point I

The Supreme Court of the State of California erred in holding that the rights of appellants secured and protected by the provisions of section 1 of article XIV of the Amendments to the Constitution of the United States were not violated by a statute which authorizes the managing board of a special assessment district (Los Angeles County Flood Control District, theretofore created by the legislature) to exercise discretionary power and accept a transfer of the works and assume the obligations of other special assessment districts (drainage districts subsequently created by the County Board of Supervisors upon petition of land-

owners therein) without requiring that the owners of taxable real property within the special assessment district (Los Angeles County Flood Control District) proposing to accept the transfer be given an opportunity to be heard on the question of whether such transfer and assumption of obligation will be of benefit to the taxable real property of the district.

Point II

The Supreme Court of the State of California erred in holding that by designating the classes of structures which might be transferred to the Los Angeles County Flood Control District at the discretion of the Board of Supervisors of Los Angeles County it is to be presumed that the legislature concluded that the Los Angeles County Flood Control [fol. 135] District would be benefited by the structures of such classes if and when they should be acquired on behalf of the Flood Control District.

Point III

The Supreme Court of the State of California erred in holding that section 13½ of the Los Angeles County Flood Control District Act refers to specific classes of structures, the nature of which indicates their relative usefulness for the purposes of the Flood Control District without the necessity of any express declaration to such effect.

Point IV

The Statute of the State of California, to wit, Statutes of 1937, page 1763, entitled, "An act to amend the 'Los Angeles County Flood Control Act,' by adding thereto a new section, to be numbered 13½, relating to the conveyance and transfer to such district of storm drain improvements, drainage improvements and drainage systems, for the assumption of liability for the payment of bonds of drainage districts issued for the construction of storm drain improvements, drainage improvements and drainage systems so conveyed and transferred, for the operation, maintenance, repair and improvement of such storm drain improvements, drainage improvements and drainage systems and the levy of a special tax therefor," approved June 29, 1937, [fol. 136] is unconstitutional and repugnant to section 1 of the Fourteenth Amendment to the Constitution of the

United States, in that it deprives appellants of their property without due process of law.

And appellants represent that the whole of the record as filed is necessary for the consideration of the case.

Dated this 8th day of September, 1938.

Ray L. Chesebro, City Attorney; Frederick von Schrader, Assistant City Attorney; William H. Neal, Assistant City Attorney; Bourke Jones, Deputy City Attorney, by Frederick von Schrader, Assistant City Attorney, Counsel for Appellant, City of Los Angeles. Frederick von Schrader, [fol. 137] William H. Neal, Bourke Jones, by Frederick von Schrader, Counsel for Appellant, Ray L. Chesebro.

Due and timely service of the above Statement of Points to be Relied Upon and Designation to Print Entire Record is hereby acknowledged this 8th day of September, 1938.

J. H. O'Connor, County Counsel; H. W. Kennedy, Deputy County Counsel; W. B. McKesson, Deputy County Counsel, by J. H. O'Connor, Counsel for Appellees.

[fol. 138] [File endorsement omitted.]

Endorsed on cover: File No. 42,853. California Supreme Court. Term No. 368. The City of Los Angeles and Ray L. Chesebro, appellants vs. Los Angeles County Flood Control District, et al. Filed September 21, 1938. Term No. 368, O. T., 1938.

> "It is not contended—nor could it well be—that any private right of the city was infringed, but only that a power to regulate in the public interest, theretofore confided to it, was taken away and lodged in another agency of the state,—one created by the state Constitution. Thus the whole controversy is as to which of two existing agencies or arms of the state government is authorized for the time being to exercise in the public interest a particular power, obviously governmental, subject to which the franchise confessedly was granted. In this no question under the contract clause of the Constitution of the United States is involved, but only a question of local law, the decision of which by the supreme court of the state is final."

This court was at pains to point out in the case that the right conferred on the City of Pawhuska was founded in legislation rather than contract. It is therefore apparent that the question there presented was one of local law alone. However, that decision does not apply to the case at bar for the reason that the right contended for by the appellant City of Los Angeles is recognized by the Supreme Court of California but the statute is held not to be in violation of that right. As was stated by Mr. Justice McKenna, in *General Oil Company v. Crain* (1908), 209 U. S. 211, after reviewing numerous decisions (p. 228):

> "It being, then, the right of a party to be protected against a law which violates a constitutional right, whether by its terms or the manner of its enforcement, it is manifest that a decision which denies such protection gives effect to the law, and the decision is reviewable by this court."

It is therefore apparent that the question of the statute being in violation of the recognized constitutional rights of appellant City of Los Angeles is not a question of local law but one over which this Honorable Court will take jurisdiction.

The rule adopted in California is not the result of caprice or unsound reasoning on the part of the courts of that state. It must be remembered that most of the principal cities of California were created under the laws of Spain and Mexico, some of the older cities having been founded prior to the formation of the Union itself. Nor were their private or corporate rights destroyed upon the acquisition of California by the United States. The background of the rights of municipalities in California is indicated by the following excerpts taken from the article on Municipal Corporations in 18 California Jurisprudence, pages 693, 694, 1040 and 1041:

> "In California the municipal corporation has a predecessor in the pueblo or town which existed under the Mexican regime. Pueblos were ordinarily formed by the union of families or settlers, or by the conversion of presidios or forts, and when once established and officially and legally recognized as such, unless governed by special acts, they came immediately within the provisions of the general laws relating to pueblos. They were entitled to certain political, municipal and property rights and privileges, and were presided over by municipal officers known as alcaldes. This municipal organization continued until the military occupation of California by the United States in 1846, and even afterwards for a certain period the pueblos were continued in existence, being presided over by American alcaldes. Except to the extent to which vested property rights were concerned, however, the Mexican system of municipal

government has had slight influence upon that provided for under the California government. * * *

"Before the military occupation of California by the army of the United States, the Mexican pueblos, or municipal corporations, were invested with title to the lands within their boundaries. * * * The pueblos retained, during the war between the United States and Mexico, all their rights to municipal lands which had been conferred upon them previously, and a grant by an alcalde of such lands, whether Mexican or American, while the war continued, was valid. * * *

"The occupation and subsequent acquisition of California by the United States did not suspend or determine any rights or interest of the pueblos or of the municipalities succeeding the pueblos, in the pueblo lands. And if any interest passed to the government of the United States by the acquisition, it was reconveyed by the act of congress of March 3, 1851, entitled, 'An Act to Ascertain and Settle the Private Land Claims of California.' This act, while granting certain of the lands within the boundaries of the pueblos and their successors in trust for the benefit of bona fide holders under their grants, also operated as a grant to the pueblos of all lands within their limits, vacant and ungranted, on the 7th of July, 1846."

It would unduly extend the length of this brief to embark upon a discourse on the nature and rights of Spanish Colonial municipalities and the rights preserved to them under the occupation of California by the United States and the Treaty of Guadalupe Hidalgo. Suffice it to say that the courts of California have declared that municipalities of that state have rights of such nature as come within the protection of the Constitution of the

United States and such declaration rests upon a consideration of the peculiar nature of California municipalities and the rights vested in them. It is therefore respectfully submitted that this Honorable Court should follow the decisions of the California courts and hold that the appellant City of Los Angeles is properly before this court and entitled to urge that its rights protected by the Constitution of the United States are violated.

POINT II.

The Question Presented Is Not Foreclosed by Previous Decisions.

Appellees contend that "since the legislature had power to authorize the acceptance of the drainage improvements by the Flood Control District and impose upon that district the burden of paying for such improvements, it also had the power to authorize the governing body of the district to accept such transfer without hearing." [R. 123.] The vice of appellee's contention is that while the legislature itself had power to make the transfer without giving property owners an opportunity to be heard, yet it is without power to delegate to an administrative board the authority to so act without making provision for such hearing. (*Fallbrook Irr. Dist. v. Bradley*, 164 U. S. 112; *Londoner v. City and County of Denver*, 210 U. S. 373; *Browning v. Hooper*, 269 U. S. 396; *Embree v. Kansas City etc. Road Dist.*, 240 U. S. 242.)

Appellees cite *Houck v. Little River Drainage Dist.* (1915), 239 U. S. 254, in support of their contention, but, as pointed out, the question presented therein "cannot properly be regarded as one of notice" (p. 264). That case involved the validity of a tax of twenty-five cents per acre levied for preliminary expenses for organization

and survey work of a drainage district which had been organized pursuant to the judgment of the Circuit Court as provided in the act under which the proceedings were instituted. In calling attention to the fact that a tax of the character there involved is but incidental to the formation of such a district and that the question of notice was not at issue, it was said, commencing at page 264:

> "* * * The owners whose lands are embraced in the district as proposed, and who have not signed the articles, are summoned and their objections to the organization and to the inclusion of their lands are heard. As a public corporation, with defined membership, the district, when established, is empowered to go forward with the expert investigations and surveys which, of necessity, must precede the adoption of a complete scheme. The outcome of these studies cannot be absolutely predicted; they may even result in the abandonment of the project. But probable feasibility has been shown, and the district, in consequence, organized. The preliminary work must then be done and its cost must be met. It is work undertaken by the district. The owners of the included lands (with one vote for each acre) elect the district officers (supervisors), who are to proceed with the surveys, etc., in the manner detailed. In the present case, the district was created upon an adequate showing of basis (236 Mo. p. 138), and it is not disputed that the plaintiffs in error received the notice to which they were entitled (Rev. Stat. [Mo.] 1909, §5497; Laws of Missouri, 1905, §8252). They were thus apprised of whatever legal consequences attached to the formation of the district with their lands in it. The present question, therefore, cannot properly be regarded as one of notice. The imposed burden, if it be in its nature a lawful one, is an incident to the organization which

they had abundant opportunity to contest. * * * It cannot be denied that the preliminary work had peculiar relation to the district. The initial inquiry, whatever its result, was for the purpose of securing the reclamation of the lands of which the district was comprised. In this inquiry, all the owners were interested. * * * And in this view, it is not material to consider whether the area of the district might subsequently be extended, or what particular lands within it would be appropriated for ditches, reservoirs, etc., if a plan of drainage were adopted and carried out. To say that the tax could not be laid except as a result of such an inquiry would be to assert in effect that as a preliminary tax it could not be laid at all. We know of no such limitation upon the state power."

The case of *Breiholz v. Pocahontas County* (1921), 257 U. S. 118, is also cited by appellees. In that case it was contended that notice and hearing was required before assessments could be levied for what might be called routine repairs and maintenance. This court adopted the language in the decision of the Supreme Court of Iowa, rendered in the case, that:

"* * * 'The work to be done may involve considerable expense or it may be a succession of petty repairs, each of which is comparatively inexpensive. To require that in each case the board must advertise the job and seek the lowest bidder [and hold hearings with respect to it] would be to hamper and prevent its efficient action without any corresponding benefit to the public.' [186 Iowa, 1147, 173 N. W. 1.]"

However, it is to be noted that this court called attention to the fact that (p. 124):

> "It is not necessary that we should consider whether a case can be imagined in which the ditches of a district might be enlarged, deepened, widened, and lengthened to an extent such as to constitute a new construction and a new taking of property, which would require a further notice and hearing before a new assessment for it could be constitutionally imposed, for we have no such case here. There was some widening of the ditches for the purpose of securing a better angle of repose for the sides, and some slight widening and deepening of the bottom at various points, for the purpose of getting a better fall and outlet for the water, but we quite agree with the two state courts that the changes made were of a character and extent fairly within the scope of a cleaning, alteration, and repair of the ditch system, and necessary to promote its usefulness."

It is respectfully submitted that adding to the Los Angeles County Flood Control District a burden of $4,234,001.25 to meet the outstanding obligations of the drainage districts in question may not be sustained on the theory of routine repairs, alterations or maintenance of structures of the Los Angeles County Flood Control District or as incidental to the formation of the district.

Appellees also call attention to *Rauch v. Himmelberger* (1924), 305 Mo. 70, which involved improvements and alterations to the works of the Little River Drainage District. It was held that no notice and hearing was required as "There is no material change in the plan of reclamation, in the sense that any new system of drainage is introduced." The court further stated that "the

fact that the work already done does not fully accomplish the full purpose of the organization of the district is, generally speaking, because of a present inadequacy of constructed ditches to accommodate the water which is delivered to them"; that "In part this is due to erosions and clogging and filling of ditches as time has progressed, and in part to the fact that some of the ditches were not made deep and wide enough in the first place," and that embankments and levees originally sufficient must be repaired. The decision follows the authority of the *Breiholz* case *(supra)*, 257 U. S. 118, and stresses the fact that the improvements are but carrying out the original plan of benefits to the lands of the district. Moreover, that decision being one of a state court, it is obviously not a previous decision of this court foreclosing the consideration of the question presented in the case at bar.

Appellees cite, as their final authority, *Davidson v. New Orleans* (1878), 96 U. S. 97, wherein certain drainage assessments were ordered approved by the Louisiana Supreme Court as against the contention that the legislature had no right to organize a private corporation to do the work and fix the price at which the work should be done; that the price so fixed was exorbitant; and that there may be a surplus collected under the assessment, in which event it would go into the city treasury. Obviously, the question of notice was not involved as the case arose out of a judicial proceeding to approve the assessment.

Evidently appellees are relying on that portion of the opinion wherein it is stated:

> "* * * That whenever by the laws of a State, or by state authority, a tax, assessment, servitude, or other burden is imposed upon property for the public use, whether it be of the whole State or of

> some more limited portion of the community, and thos laws provide for a mode of confirming or contestin the charge thus imposed, in the ordinary courts o justice, with such notice to the person, or such pro ceeding in regard to the property as is appropriate t the nature of the case, the judgment in such proceed ings cannot be said to deprive the owner of hi property without due process of law, however ob noxious it may be to other objections."

In this connection, attention is called to the concurrin opinion by Mr. Justice Bradley, wherein it is said, a page 107:

> "* * * that, in judging what is 'due process o law', respect must be had to the cause and object o the taking, whether under the taxing power, th power of eminent domain, or the power of assess ment for local improvements, or none of these; an if found to be suitable or admissible in the specia case, it will be adjudged to be 'due process of law' but if found to be arbitrary, oppressive and unjust it may be declared to be not 'due process of law'."

Appellees can find no support in these generalizations o what constitutes due process of law, in view of the fac that this court has on subsequent occasions specifically held that the nature of special assessments for local im provements levied by local administrative boards are lack ing in due process of law unless those whose lands ar to be burdened therewith are given notice thereof and a opportunity to be heard of the question of benefits to th lands to be assessed. (*Fallbrook Irr. Dist. v. Bradley (supra)*, 164 U. S. 112; *Londoner v. City and County o*

Denver, 210 U. S. 373; *Browning v. Hooper (supra),* 269 U. S. 396; *Embree v. Kansas City etc. Road District (supra),* 240 U. S. 242.)

It is respectfully submitted that an analysis of the decisions cited by appellees shows that the question presented in this case is not foreclosed by the previous decisions of this Honorable Court.

POINT III.

The Questions Involved Are Substantial and Warrant This Court's Taking Jurisdiction.

The contention of appellees that "the questions involved are too unsubstantial to justify the Supreme Court taking jurisdiction" [R. 124] is answered in *Hamilton v. Regents of the University of California* (1934), 293 U. S. 245, wherein it was said, at page 258:

> "And the appellees insist that this appeal should be dismissed for the want of a substantial federal question. But that contention cannot be sustained for we are unable to say that every question that appellants have brought here for decision is so clearly not debatable and utterly lacking in merit as to require dismissal for want of substance."

Appellees contend that "the flood control district was created by the legislature and therefore property owners within it will not be heard to say that their property is taken without due process of law" [R. 124], and "that when the legislature forms a special assessment district and designates its boundaries, property owners in such district cannot assail the action of the legislature unless such action is palpably arbitrary and a plain abuse of power". [R. 125.]

Appellants readily admit that where a special assessment district is created by the legislature, property owners are not entitled to a a hearing on the question of benefits to the lands assessed. Appellants contend, however, that the transfer of the drainage district works and obligations to the Flood Control District was not made by the legislature but by the Board of Supervisors and that therefore it was essential that the statute authorizing the Board of Supervisors, in their discretion, to make such transfers provide for notice and hearing. This is the crux of the controversy and the authorities cited by appellees are not directed to the point in dispute. They base their argument on the hypothesis that the transfer of the drainage districts' works and obligations is the act of the legislature, whereas appellants contend that it is the act of the Board of Supervisors. Appellants frankly admit that they have found no decisions involving special assessments where this precise point has been considered and apparently appellees have likewise been unsuccessful. However, there are decisions where courts have been called upon to determine whether a particular act is one of the legislature or of a local board.

In *Stanley v. Jeffries* (1929), 86 Mont. 114, it was held that an act of the legislature which authorized the assumption by municipalities of the payment of bonds and warrants of special improvement districts theretofore created, if a majority of the taxpaying electors should consent thereto, was not violative of the constitutional prohibition in that state against the legislature's passing any law

"which imposes on the people of any county or municipal subdivision of the state a new liability in respect to transactions or considerations already passed," for the reason that (p. 133):

> "Herein the Legislature did not attempt to impose a liability upon the people with respect to past transactions, but merely gave them the option to impose such a burden upon themselves if they saw fit, which, in so far as this inhibition of the Constitution is concerned, they may do."

In *Amos v. Mathews* (1930), 99 Fla. 1, the question involved was whether a statute providing that gasoline tax revenues should be apportioned to counties in proportion to their bonded indebtedness for roads and bridges was violative of the constitutional provision against using state taxes for local purposes. In holding that the use of tax moneys for the payment of such road and bridge bonds would be for a local purpose, it was pointed out that the legislature might have provided for the construction of the roads and bridges in the first place but that it did not do so, and that (p. 23):

> "The counties and districts could have refrained, but they did not; they borrowed the money by issuing bonds, and constructed the roads. The Legislature merely authorized; it did not compel. So each of the counties and districts, of its own choice, took the necessary steps to issue the bonds upon the ground that the construction of the roads in question constituted a county (or district) purpose, which it was, although the same construction projects might have been accomplished by the state as a state purpose. Construction of these roads, however, as local pro-

> jects has been completed, and that transaction is at an end. There remains only the payment of the local obligations thus incurred. The county and district bonds to pay for those roads were issued and validated as county and district bonds. Hence their legal status became fixed as purely county and district obligations, issued for a local purpose. They were not, and could not be, state obligations."

In *Miller & Lux v. Board of Supervisors* (1922), 189 Cal. 254, the validity of an order of the Board of Supervisors calling an election for the establishment of the Madera Irrigation District was attacked upon the ground, among others, that "no evidence was introduced in support of or opposed to the objections of the petitioner that its lands would not be benefited by the irrigation system described in the petition or by the formation of said district."

In holding that the petition stated a cause of action, it was said, at page 277:

> "In considering the constitutionality of the validating act as an act *creating* the Madera Irrigation District we meet with several difficulties. In the first place, the conclusive presumption indulged in by the courts to the effect that the legislature had duly considered the benefits to be derived by the lands included within the district is hardly applicable where the legislature expressly adopts the findings of the board of supervisors as to benefits."

Appellants respectfully submit that authorities such as these support the contention that when the legislature merely authorizes something to be done, at the discretion of a local administrative board, it is not the act of the legislature but of the local board, and it follows that sec-

tion 13½ of the Los Angeles County Flood Control Act, which confers discretionary power upon the Board of Supervisors to transfer, in their discretion, the drainage district works of the classes described therein, a transfer made under the authority of this section by the Board of Supervisors is not the act of the legislature.

Appellees contend that "the statute in question was an implied finding by the legislature that the drainage works authorized to be accepted by the Flood Control District were useful and necessary for flood control purposes." [R. 125.]

If appellees mean that the original enactment of the Los Angeles County Flood Control District Act was an implied legislative finding that the works and property authorized to be constructed to carry out the purposes of the act amounted to an implied finding by the legislature that such works would be of benefit to the district, appellants are in accord for such was the decision of the Supreme Court of California in *Los Angeles County Flood Control District v. Hamilton* (1917), 177 Cal. 119. But if appellees mean that section 13½ of the Los Angeles County Flood Control Act as adopted by the legislature in 1937, which is the statute under attack in this case, was an implied legislative finding of benefit, appellants submit that appellees are in error.

Section 16 of the Los Angeles County Flood Control Act gave the Board of Supervisors the power to acquire all works and property necessary for carrying out the purposes of the act. That section is part of the original enactment, but section 13½ did not place any such restriction upon the acts of the Board of Supervisors. It gave them discretionary power to acquire classes of property which, on their face, and also by force of judicial declara-

tion, were not calculated to be of benefit to the Flood Control District.

As before mentioned, in the statement of the case, the validity of Drainage District No. 1 was upheld on the ground that the drainage district was formed to serve a purpose different from that of the Flood Control District and was formed to take care of the peculiar needs of a local area within the Flood Control District. If these drainage district works were necessary and useful for the purposes of the Flood Control District, the Board of Supervisors could have purchased the same under the authority of section 16 of the act. However, it was not until the adoption of the 1937 amendment adding section 13½ to the act that the Board of Supervisors attempted to transfer these drainage district works to the Flood Control District, and the opinion of the Supreme Court in the case at bar specifically points out [R 82] that the petition shows that the Board of Supervisors in making the transfer was acting under the purported authority of section 13½ and not under section 16 of the act.

In *Palo Verde Irrigation District v. Seeley* (1926), 198 Cal. 477, wherein the Palo Verde Irrigation District was organized by the legislature in order to consolidate the functions of three separate local improvement districts, namely, a levee district, a drainage district and a mutual water system, the legislature, in the Consolidation Act, as amended, made an express finding to the effect that all lands within the irrigation district will be benefited by the improvements of the old drainage district, the old levee district and the mutual water system, and it was upon that ground that the Supreme Court of California distinguished that case from earlier decisions of the court, such as *Reclamation District No. 70 v. Birks* (1911), 159

Cal. 233, and a previous decision involving the validity of the original Palo Verde Irrigation District Act prior to its amendment (*Barber v. Galloway* (1924), 195 Cal. 1), which indicated that the obligations of one special assessment district could not be imposed upon another district by a statute which made no finding that the works would be of benefit to the district to which the obligation to pay for the same was transferred.

An extended argument upon this question is an argument directed to the merits of the case, which appellants deem to be a matter with which this court is not concerned at the present time. Appellants respectfully submit, however, that the merits of the controversy have been sufficiently stated to show that the questions involved are substantial and are sufficient to justify this Honorable Court in assuming jurisdiction of the controversy.

POINT IV.

The Decision of the Supreme Court of California Does Not Rest on a Non-Federal Ground.

Appellees contend that where the decision of the state court rests upon a nonfederal ground the Supreme Court will not entertain jurisdiction even though a federal question is involved [R. 126]. The entire decision of the Supreme Court of California is devoted to the question of whether notice and an opportunity to be heard upon the matter of transferring these drainage district works and obligations to the Los Angeles County Flood Control District was necessary in order to afford appellants due process of law. The whole decision is directed to that one point, and it is impossible to conceive how it could be urged that the decision rested upon a nonfederal ground.

Even if a nonfederal ground existed upon which the decision could have been based, the fact remains that no such ground was considered by the Supreme Court of California in arriving at its decision. As was said in *International Steel & Iron Co. v. National Surety Co.* (1936), 297 U. S. 657, commencing at page 665:

> "* * * The appellee says that estoppel, a nonfederal ground, adequate to support the judgment, was in the case from its inception. The point was not made or considered in the state courts. The validity of the act was adjudged on the issue of impairment of the obligation of the appellee's bond. We do not, therefore, consider the defense of estoppel.
>
> " 'The rule that, when the decision of a state court may rest upon a non-federal ground adequate to support it, this court will not take jurisdiction to determine the federal question, has no application where, as here, the non-federal ground might have been considered by the state court but was not.' "

In *New York Electric Lines Co. v. Empire City Subway Co.* (1914), 235 U. S. 179, where it was claimed that a certain resolution revoking a right to lay conduits in the city streets impaired the obligations of a contract with the city, this court stated, at page 186:

> "* * * The plaintiff in error insists that the resolution thus sustained was an unconstitutional impairment of the obligation of its contract with the city.
>
> "We think that it sufficiently appears that this question was raised in the state court and as the state court gave effect to the repealing resolution the case is properly here. It is therefore the duty of this court to determine for itself whether a contract existed and whether its obligation has been impaired."

The four cases cited by appellees [R. 126] contain nothing which indicates that the case at bar may be said to rest upon a nonfederal ground. For instance, the case of *Utley v. City of St. Petersburg* (283 U. S. 106) was a case where the Supreme Court of Florida definitely decided that the appellants therein were guilty of laches and estopped from asserting their rights. Such cases can have no possible bearing upon the issues presented in this case as the Supreme Court of California clearly based its decision upon the sole ground that the statute adding section 13½ to the Los Angeles County Flood Control District Act was not violative of the Federal Constitution and the rights of appellants asserted therein.

Appellees call attention to section 13 of article XI of the Constitution of the State of California, which they claim has given the legislature plenary power over irrigation districts, reclamation districts and drainage districts [R. 126]. Obviously, such constitutional provision, while giving the legislature power to act as regards the laws of the state, would not give the legislature the power to act in violation of the provisions of the Constitution of the United States (*McCulloch v. State of Maryland* (1819), 17 U. S. 316, 406). However, the courts of California have pointed out that section 13 of article XI of the Constitution of California does not give the legislature power to act contrary to the provisions of the state Constitution governing the exercise of legislative power in general. (See *Mordecai v. Board of Supervisors* (1920), 183 Cal. 434, 441.)

Appellees continue [R. 127-129] with substantially the same argument previously made that the legislature organized the Flood Control District and has the power to impose burdens upon the district after its organization,

and that the granting of authority to transfer such str tures indicates a legislative declaration of benefit to Flood Control District. But, as appellants have alre pointed out in answer to the same argument previou made, the legislature did not do these things but delega the exercise of the power to a local administrative boa namely, the County Board of Supervisors. The Cou Board of Supervisors is without legislative power over subject-matter and therefore notice and an opportunity be heard is an essential element of the valid exercise its administrative and *quasi*-judicial power. (*Fallbro Irr. Dist. v. Bradley* (*supra*), 164 U. S. 112; *Miller Lux v. Board of Supervisors* (*supra*), 189 Cal. 2 *People v. Van Nuys Lighting Dist.* (1916), 173 Cal. 7 798.) Moreover, as previously pointed out, these str tures were not of such nature as to indicate that they w be useful to the Flood Control District. It is appare that the decision of the Supreme Court does not rest on nonfederal ground but on the sole ground that the statu is not invalid as being in violation of the rights of app lants protected by section 1 of article XIV of the Amen ments to the Constitution of the United States.

Quoting from *People Etc. of New York Ex Rel. Brya v. Zimmerman* (1928), 278 U. S. 63, 67:

> "Of course, the decision must have been again the claim of invalidity, but it is not necessary th the ruling shall have been put in direct terms. If t necessary effect of the judgment has been to deny t claim, that is enough."

Conclusion.

In conclusion, it is respectfully submitted that the appellant City of Los Angeles is possessed of rights protected by the Constitution of the United States, that the questions presented in this case are federal questions of a substantial nature not foreclosed by previous decisions of this Honorable Court, that the decision of the Supreme Court of California rests solely upon a federal ground, and that, therefore, appellees' motion to dismiss this appeal should be denied as to both appellants.

Respectfully submitted,

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APPENDIX.

Pertinent Provisions of Los Angeles County Flood Control District Act, (Stats. 1915, p. 1502 as Amended by Stats. 1925, p. 973; 1927, pp. 300, 548, 1016; 1929, p. 1547; 1931, pp. 690, 1657; 1933, p. 1493; 1935, pp. 49, 1003, 1200; 1937, p. 1463.)

"Sec. 2. *Purposes of act.* The objects and purposes of this act are to provide for the control and conservation of the flood, storm and other waste waters of said district, and to conserve such waters for beneficial and useful purposes by spreading, storing, retaining or causing to percolate into the soil within said district, or to save or conserve in any manner, all or any of such waters, and to protect from damage from such flood or storm waters, the harbors, waterways, public highways and property in said district. * * *"

"Sec. 13½. The board of supervisors of said Los Angeles County Flood Control District, by a four-fifths vote, may accept on behalf of said district a transfer and conveyance of all, but not less than all, storm drain improvements, drainage improvements or drainage systems lying within the territorial limits of the flood control district and within any of the following described classes, to-wit:

"1. Those which were constructed under the jurisdiction, control or supervision of the board of supervisors of the county of Los Angeles, and which are under the jurisdiction of said board;

"2. Those which were constructed by or for the county of Los Angeles or any drainage district within said county or by or for the Los Angeles County Flood Control District;

"3. Those constructed pursuant to the provisions o
act entitled 'An act to promote the drainage of wet, sw
and overflowed lands, and to promote the public he
in communities in which they lie,' approved March
1903, as amended, and those which have been constru
pursuant to the provisions of the Drainage District
provement Act of 1919, as amended, prior to Januar
1937;

"4. Those within any incorporated city, town
municipality of the county of Los Angeles whose le
lative body has transferred and conveyed such storm d
improvements, drainage improvements or drainage syst
to said flood control district pursuant to the provision
any act of the State of California authorizing such tra
fer and conveyance.

"Upon the transfer or conveyance to said flood con
district of any such storm drain improvements, drain
improvements or drainage systems, to pay the cost
expense of the construction of which bonds of any dr
age improvement district have been issued, said f
control district shall thereupon be and become liable
the payment of the principal upon the bonds of s
drainage improvement districts maturing subsequent
the date of such conveyance and upon the indebtedn
of such drainage improvement district represented by
terest coupons maturing subsequent to such date of tra
fer. The board of supervisors of the flood control dist
shall levy a special tax each year upon the taxable
property in said flood control district sufficient to pay
principal and interest on the bonds of said drainage
tricts as such principal and interest become due sub
quent to the date of such conveyance and transfer. S
tax shall be levied and collected on said real property

the time and in the same manner as the general tax levy for county purposes, and when collected shall be paid into the county treasury of said county of Los Angeles to the credit of said district fund and shall be used for the payment of the principal and interest on said drainage district bonds and for no other purpose. The principal and interest on such drainage district bonds shall be paid from the county treasury of said county of Los Angeles in the manner provided by law for the payment of principal and interest on bonds of said county.

"Whenever the board of supervisors of said Los Angeles County Flood Control District, by a four-fifths vote, has accepted on behalf of said district a transfer and conveyance of the storm drain improvements, drainage improvements or drainage systems heretofore mentioned, then, upon the conveyance to said flood control district by any city, town or municipality within the territorial limits of said district by a four-fifths vote of its legislative body of any storm drain improvement, drainage improvement or drainage system constructed therein, it shall thereupon accept the same and from and after such transfer or conveyance to such flood control district by such city, town or municipality said flood control district shall be solely liable for the operation, maintenance, repair and improvement of such storm drain improvements, drainage improvements or drainage systems.

"Upon the transfer or conveyance to said flood control district of any such storm drain improvements, drainage improvements or drainage systems, said flood control district shall thereafter do all things necessary for the proper operation, maintenance, repair and improvement of any such storm drain improvements, drainage improvements or drainage systems.

"The board of supervisors of the flood control district shall have power in any year to levy a special tax upon the taxable real property in said flood control district sufficient to pay the cost and expense of operating, maintaining, repairing and improving the storm drain improvements, drainage improvements or drainage systems so conveyed and transferred, which said tax shall be levied and collected at the same time and in the same manner as the general tax for county purposes, and the revenue derived from said tax shall be paid into the county treasury to the credit of said district and said board of supervisors shall have the power to control and order the expenditure thereof for said purposes. Taxes levied under authority of this section shall be separate and distinct from, and shall be in addition to the taxes authorized to be levied under section 14 of this act." [1937 Amendment.]

Sec. 16. * * *

"Said board of supervisors shall have power to do all work and to construct and acquire all improvements necessary or useful for carrying out any of the purposes of this act; and said board of supervisors shall have power to acquire either within or without the boundaries of said district, by purchase, condemnation, donation or by other lawful means in the name of said district, from private persons, corporations, reclamation districts, swamp land districts, levee districts, protection districts, drainage districts, irrigation districts, or other public corporations or agencies or districts, all lands, rights of way, easements, property or materials necessary or useful for carrying out any of the purposes of this act; to make contracts to indemnify or compensate any owner of land or other property for any injury or damage necessarily caused by the exercise of the powers conferred by this act, or arising

out of the use, taking or damage of any property, rights of way or easements, for any of such purposes; to compensate any reclamation district, protection district, drainage district, irrigation district or other district, public corporation or agency or district, for any right of way, easement or property taken over or acquired by said Los Angeles county flood control district as a part of its work of flood control or conservation or protection provided for in this act, and any such reclamation district, protection district, drainage district, irrigation district or other district or public corporation or agency is hereby given power and authority to distribute such compensation in any manner that may be now or hereafter allowed by law; * * *."